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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Paw Pasaw Baw, et al.,

10 Plaintiffs,

11 v.

12 United States of America,

13 Defendant.  
14

No. CV-17-03747-PHX-GMS

**ORDER**

15 Pending before the Court is the United States of America's Motion for Summary  
16 Judgment. (Doc. 27). Plaintiff Paw Pasaw Baw, who is represented by counsel in this  
17 matter, has failed to respond to that motion. The Court will summarily grant the  
18 Defendant's Motion for Summary Judgment pursuant to Local Rule 7.2.

19 Local Rule 7.2(i) provides that a party's failure to respond to a motion "may be  
20 deemed consent to the ... granting of the motion and the Court may dispose of the motion  
21 summarily." LRCiv 7.2(i); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.1995)  
22 (holding that a district court is not required to examine the merits of an unopposed motion  
23 before summarily granting it pursuant to a local rule).

24 The Ninth Circuit has established "a five-part test to determine whether the  
25 dismissal sanction is just: (1) the public's interest in expeditious resolution of litigation; (2)  
26 the court's need to manage its docket; (3) the risk of prejudice to the party seeking  
27 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the  
28 availability of less drastic sanctions." *Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051,

1 1057 (9th Cir.1998) (internal quotations omitted); see also *Ferdik*, 963 F.2d at 1260.  
2 However, “This ‘test’ is not mechanical. It provides the district court with a way to think  
3 about what to do, not a set of conditions precedent for sanctions or a script that the district  
4 court must follow[.]” *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d  
5 1091, 1096 (9th Cir.2007). “[W]here a court order is violated, factors 1 and 2 support  
6 sanctions and 4 cuts against case dispositive sanctions, so 3 and 5 ... are decisive.” *Valley*  
7 *Eng’rs*, 158 F.3d at 1057.

8 **Factor 3—Risk of Prejudice to Defendant**

9 Defendant, the United States of America, will be prejudiced by Plaintiff’s ongoing  
10 refusal to respond to their motion for summary judgment, and by Plaintiff’s failure to  
11 comply with the Local Rules of Civil Procedure. Plaintiffs failure to respond and violation  
12 of the Local Rules, if permitted to continue, would only frustrate Defendants’ efforts and  
13 force Defendants to expend additional time and resources in defending the claims.  
14 Plaintiffs have not presented any excuse as to their delay, which also indicates that there is  
15 a risk of prejudice to the Defendants. *Yourish v. California Amplifier*, 191 F.3d 983, 991  
16 (9th Cir. 1999).

17 In their motion for summary judgment, the United States argues that the  
18 administrative record in this case demonstrates that the Plaintiffs violated the underlying  
19 statute, and that therefore the disqualification of Plaintiff’s from the program was justified  
20 (Doc. 27 at 6, 7). These arguments are fairly and timely raised in this action, and they  
21 deserve a timely response by Plaintiffs. Because Plaintiffs have failed to respond, there is  
22 a significant risk of prejudice to Defendant.

23 **Factor 5—Availability of Less Drastic Solutions**

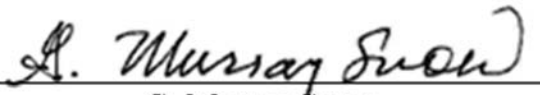
24 While less drastic sanctions may be generally available, they are not appropriate in  
25 this context. Plaintiff, who is represented by counsel, and has failed to respond to a timely  
26 filed motion for summary judgment. And Plaintiff has failed to request additional time or  
27 excuse this failure. As such, a less drastic sanction is not appropriate in this context.  
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1 With four factors weighing strongly in favor of dismissal and one factor weighing  
2 against, dismissal is appropriate here. *See, e.g., Wystrach v. Ciachurski*, 267 F. App'x 606,  
3 607–08 (9th Cir.2008) (upholding dismissal under Local Rule 7.2(i) where the first three  
4 factors all weighed in favor of dismissal); *Yourish*, 191 F.3d at 992 (same).

5 **CONCLUSION**

6 **IT IS THEREFORE ORDERED** that Defendant's Motion for Summary  
7 Judgment (Doc. 27) is **GRANTED**. The Clerk of Court is directed to enter judgment  
8 accordingly.

9 Dated this 7th day of December, 2018.

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11 G. Murray Snow  
12 Chief United States District Judge  
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